

**REMARKS**

Claims 16-32 were previously pending in the application. By the Amendment, the specification and claims 16, 17 are currently amended. New claims 33-35 have been added, and claims 18-32 remain unchanged. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 16 and 17 stand rejected on formal grounds, and all claims 16-32 stand rejected under the cited prior art of record. Specifically, claims 16, 17, 22, 24, 25, 27-29 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa et al. (EP 0 383 222 A2). Additionally, claims 18-21, 26 and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Cur (U.S. Patent No. 5,377,498). Still further, claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Mann et al. (U.S. Patent No. 3,018,637), and claims 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Sessa et al. (U.S. Published Application No. 2002/0002839).

Independent claim 16 defines a refrigerating appliance including at least two storage compartments thermally insulated from each other and from a surrounding area, and an evaporator, which can be cooled independently from an evaporator of at least one other storage compartment, being associated with each storage compartment. The appliance includes means for switching the mode of operation of at least one of the compartments between a freezing mode and a non-freezing mode.

With regard to the objection to claim 16, the noted phrase has been amended as suggested by the Examiner, which suggestion is acknowledged with appreciation. Withdrawal of the objection is requested.

With regard to claim 17, Applicants note the application claims priority from an application originally filed in Germany. It should be assumed that all references to temperature relate to degrees Celsius. See, for example, page 6, lines 2-11 of the present specification. Claim 17 has been appropriately amended to reference 0°C. Withdrawal of the rejection is requested.

With regard to the rejection under 35 U.S.C. §103(a) over *Alsa*, Applicants respectfully traverse the rejection. As noted, claim 16 recites that an evaporator is associated with *each* storage compartment of the refrigerating appliance. *Alsa*, in contrast, includes an evaporator 6 for the refrigerator and an evaporator 8 for the freezer. The third compartment 10 does not include any such evaporator; rather, the third compartment 10 is cooled using controlled airflow between either the freezer or the refrigerator. See, for example, col. 2, line 41 through col. 3, line 26. In this context, Applicants further submit that it would not have been obvious to incorporate an additional evaporator in the *Alsa* device. *Alsa* endeavors to provide a simple and inexpensive construction of a refrigerating device that includes a third compartment adjustable to at least two different temperatures. See, for example, col. 1, lines 50-54. *Alsa* achieves this with controlled airflow from the compartments with evaporators. *Alsa* does not suggest a modification to include an additional evaporator since such a modification would increase the manufacturing cost and also would subvert the

functionality of the actuator 15 and flap 14 that effect the temperature in the intermediate compartment. For at least these reasons, Applicants submit that the rejection of claim 16 is misplaced.

In addition, it is well settled that recitations in “means plus function” format are interpreted to encompass the structure described in the specification that performs the noted function and equivalents thereof, as set forth in 35 U.S.C. §112, sixth paragraph. Claim 16 defines “means for switching the mode of operation of at least one of the compartments between a freezing mode and a non-freezing mode.” Since each compartment in claim 16 includes an evaporator as noted above, at a minimum, the structure is cooperable with the respective evaporators to switch the mode of operation. The specification describes regulators 14, 15 connected to a temperature control circuit, which establishes a refrigeration requirement of the compartments 2, 3. See, for example, page 5, line 23 through page 6, line 2. Other embodiments are described with reference to Figs. 2-6. In contrast to the claimed structure, as discussed above, the third compartment 10 in Alsa is cooled using controlled airflow between either the freezer or the refrigerator. This structure neither corresponds to the claimed invention nor amounts to an equivalent of the structure. Thus, the Alsa structure does not render obvious the structure described in the specification that performs the noted function, nor does Alsa disclose equivalents thereof. For these reasons also, Applicants submit that the rejection of claim 16 is misplaced.

Claims 17, 22, 24, 25, 27-29 and 31 depend from claim 16 and are allowable for the same reasons and also because they recite additional patentable subject matter.

Reconsideration and withdrawal of the rejection are respectfully requested.

With regard to the rejection of claims 18-21, 26 and 32, Applicants submit that the Cur patent does not correct the deficiencies noted above with regard to Alsa. In particular, Cur discloses a refrigeration system **having a single evaporator** for cooling multiple refrigeration compartments. Cur references use of the *single* evaporator throughout its description. Applicants submit that these claims are thus allowable by virtue of their dependency on an allowable independent claim and also because they recite additional patentable subject matter.

Moreover, claim 18 recites that the switching means are provided for at least two compartments. Without conceding the Office Action's characterization of the Cur patent, Applicants submit that Alsa teaches away from any such modification. As noted, Alsa endeavors to provide a simple and inexpensive construction of a refrigerating device that includes a third compartment adjustable to at least two different temperatures. Alsa achieves this with controlled airflow from the other two compartments. This configuration is important to achieve Alsa's intended goals, and the proposed modification thus contradicts an important feature of the Alsa device. Even under the Supreme Court's *KSR* decision, such a modification is not proper as the Alsa device will no longer perform the same function it did prior to the modification. As a consequence, the results of the proposed modification could not have been predictable. Also, as noted, the Cur system utilizes a single evaporator, which is distinguishable from the claimed invention.

A similar argument can be made with regard to claims 26 and 32. It is directly contrary to Alsa's express teachings to modify its structure such that all compartments can be operated in the same plurality of operating modes, or such that the device additionally includes a second regulator and a second selector switch.

Withdrawal of the rejection is requested.

With regard to the rejections of claims 23 and 30, Applicants submit that the Mann patent and the Sessa publication do not correct the deficiencies noted above with regard to Alsa. As such, Applicants submit that these claims are allowable by virtue of their dependency on an allowable independent claim and also because they recite additional patentable subject matter.

Claims 33-35 have been added. Claim 33 defines structure similar to that defined in claim 1, and Applicants submit that claim 33 is allowable for similar reasons. Additionally, claim 33 recites that *each of the storage compartments is operable in a plurality of operating modes of different temperatures*. Alsa is not capable of such operation. Claims 34 and 35 depend from claim 33 and are allowable for the same reasons. Claims 34 and 35 expand on the plurality of operating modes.

**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 16-35 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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